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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 351

LOUISIANA PUBLIC SERVICE COMMISSION, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

MOTION TO AFFIRM

Pursuant to Rule 16, paragraph 1(c), of the Revised Rules of this Court, appellees United States of America and Interstate Commerce Commission move that the judgment of the district court be affirmed.

This is a direct appeal from a final judgment entered July 12, 1954, by a three-judge district court convened pursuant to 28 U. S. C. 2284, 2325, dis-

missing a complaint seeking to set aside a Commission order. The order required respondent rail carriers to increase certain intrastate rates in Louisiana to the level of interstate rates.

After the Commission had ordered a general increase in interstate freight rates, twenty railroads operating in Louisiana requested the Louisiana Public Service Commission to grant similar increases in intrastate rates. The Louisiana Commission allowed the increases except for certain "exempted commodities." The railroads then petitioned the Interstate Commerce Commission to increase the intrastate rates on the "exempted commodities." After full administrative proceedings, the Commission found that these intrastate rates are abnormally low, that traffic thereunder fails to produce its fair share of the revenues required to enable the railroads to provide adequate and efficient service, and that the rates are unjustly discriminatory against interstate commerce. *Louisiana Intrastate Freight Rates and Charges,* 291 I. C. C. 279, 314-315. The Commission directed the railroads to increase the intrastate rates to the level at which it had previously fixed the interstate rates.

On appeal, the district court unanimously sustained the Commission's order. The court held that, under *King* v. *United States,* 344 U. S. 254, the Commission's findings were "entirely adequate" to support its conclusion, and that, based on the court's review of the "entire record," such findings were supported by substantial evidence.

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We submit that these conclusions of the district court were plainly correct, and that this appeal presents no questions of substance warranting further review by this Court.

1. Appellants contend (Jurisdictional Statement, pp. 15, 20) that the findings of the Commission are inadequate to support its order. Plainly, however, *King* v. *United States*, 344 U. S. 254, establishes the sufficiency of the findings in this case. In *King*, this Court explicitly held (pp. 270-271) that a Commission order increasing Florida intrastate rates to the interstate rate-level was supported by findings (1) that the intrastate rates were abnormally low and were not contributing their fair share to the carriers' revenues; (2) that the transportation conditions incident to the intrastate movement were not more favorable than those incident to the interstate movement; (3) that the increased intrastate states would not exceed a just and reasonable level; and (4) that such increased rates would substantially increase the carriers' revenues therefrom, and would constitute not more than a fair proportion of their total income. As the court below correctly stated, the Commission's findings in the instant case are "very similar" to those made in *King*,[1] and they are adequate to support the order.

[1] In the instant case, the Commission found (291 I.C.C. at 314-315), *inter alia*, that the intrastate rates were abnormally low and not producing their fair share of the carriers' necessary earnings (Fdg. 3), that the conditions incident to Louisiana intrastate transportation were not more favorable than those incident to the interstate transportation (Fdg. 1),

North Carolina v. *United States*, 325 U. S. 507, upon which appellants rely, is not in point. In the *North Carolina* case, this Court set aside a Commission order raising intrastate states on the ground that a mere disparity between interstate and intrastate rates is not of itself sufficient to establish unjust discrimination. The *King* decision distinguished the *North Carolina* case on the ground that in *King* the Commission had made the very findings which the Court had found wanting in *North Carolina*. Since, as the district court held, "the findings which the Court found adequate in the *King Case* were made by the Commission in the instant case, * * * the holding in the *North Carolina Case* is not applicable here."

2. Appellants also contend (Jurisdictional Statement, pp. 16-19) that the court below did not follow *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U. S. 474, which directs that a reviewing court, in determining the sufficiency of the evidence supporting agency findings, shall consider the record as a whole. The court's opinion makes it clear, however, that this was the very standard which the court followed in testing the sufficiency of the evidence. The court, citing the

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and that the increased intrastate rates will not be unreasonable and will increase the carriers' annual income by more than $1,700,000 (Fdg. 6).

For subsidiary findings showing that the intrastate rates on the various commodities are abnormally low (Fdg. 3), see, *e.g.*, 291 I.C.C. at 290, 294, 297, 301, 310, 312. For subsidiary findings as to the comparative conditions affecting intrastate and interstate traffic (Fdg. 1), see *id.* at 287. For subsidiary findings as to the reasonableness of the newly prescribed rates, see, *e.g.*, *id.* at 291, 294, 297, 299, 302, 309, 312.

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Universal Camera case, stated that in determining whether the Commission's findings are supported by substantial evidence, "the record must be considered as a whole." The court further stated that it had "considered the entire record," comprising "nearly one thousand pages of testimony and a great number of exhibits," that it would serve "no useful purpose" for the court to review the evidence in its opinion, and that the record contains "a large volume of substantial evidence adduced by both sides." The weighing of this conflicting factual evidence was, as the district court correctly held, a "function which peculiarly addressed itself to the expertise of the Commission." See *New England Divisions Case*, 261 U. S. 184, 203-204.

We do not attempt to restate here the underlying evidence, since it is carefully detailed in the Commission's report. Moreover, it suffices, we believe, that the initial reviewing court, which has "primary responsibility" (see *National Labor Relations Board* v. *Pittsburgh S. S. Co.*, 340 U. S. 498, 502), has determined, after full consideration, that the essential findings are supported, and that there appear to be no special circumstances which would warrant a recanvassing of the record by a second reviewing court. See *New England Divisions Case*, *supra*, at 203-204; *Radio Corp.* v. *United States*, 341 U. S. 412, 415; cf. *United States* v. *Yellow Cab Co.*, 338 U. S. 338, 342.[2]

[2] Appellants also contend (Jurisdictional Statement, p. 13) that the Commission's previous refusal to grant an increase in Louisiana intrastate rates following an earlier general increase

CONCLUSION

For the foregoing reasons, we submit that the decision below is correct and that this appeal presents no substantial question. The judgment of the district court should accordingly be affirmed.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General.

EDWARD M. REIDY,
General Counsel,
Interstate Commerce Commission.

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in interstate rates (284 I.C.C. 467) forecloses it from granting the present increases. The present case, however, is not a continuation of any prior proceeding. The doctrines of *stare decisis* and *res judicata* do not govern Commission proceedings, and the Commission is always free to re-examine its prior finding in the light of changed conditions. *Arizona Grocery Co.* v. *Atchison, Topeka and Santa Fe Railway Co.*, 284 U.S. 370; *Beard-Laney, Inc.* v. *United States*, 83 F. Supp. 27 (E.D. S.C.), affirmed *per curiam*, 338 U.S. 803.

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